

**Virginia Soil and Water Conservation Board  
Stormwater Management Regulations Technical Advisory Committee  
Subcommittee on Part III  
Tuesday, August 8, 2006  
DEQ Piedmont Regional Office  
Glen Allen, Virginia**

**Stormwater Management Regulations Technical Advisory Committee  
Subcommittee Members Present**

Michelle Brickner, Fairfax County  
Jack Frye, Department of Conservation and Recreation  
Kevin Haile, Loudoun County  
Lee Hill, Department of Conservation and Recreation  
Joe Lerch, Chesapeake Bay Foundation  
David Rundgren, New River Valley PDC  
Alyson Sappington, Thomas Jefferson Soil and Water Conservation District  
Gerald Seeley, Jr. Department of Environmental Quality  
Ingrid Stenbjorn, Town of Ashland

**Facilitator**

Judy Burtner, J. Burtner & Associates

**DCR Staff**

David C. Dowling, Director of Policy, Planning and Budget  
Eric R. Capps, E&S Control and Construction Permitting Manager  
Jim Echols, Regional Manager  
Michael R. Fletcher, Director of Development  
Christine Watlington, Policy, Planning and Budget Analyst  
Ryan Brown, Office of the Attorney General

**Others Present**

Karlee Copeland, PBS&J  
Karin White, Aqualaw  
Larry Land, Virginia Association of Counties  
Charles B. Williamson, Prince William County

Ms. Burtner called the meeting to order and welcomed attendees. She said that the process for the day would be to review a draft document pertaining to Part III of the Regulations. The document was prepared by DCR staff based on prior input from the

TAC. The purpose of the meeting was to get a more complete and cleaner regulation draft to present to the full TAC at the August 21<sup>st</sup> meeting.

### **Working Discussion – DRAFT Part III**

Mr. Hill presented the draft Part III document. A copy of the draft is included as Attachment #1.

Mr. Hill said that in the existing regulations, Part III outlines what a local stormwater management program should include. It includes applicability, technical criteria, requirements for local programs and local ordinance and administrative procedures.

Mr. Hill noted that the purpose of the TAC was to expand the existing Part III with regard to defining local programs.

Mr. Dowling said that the draft repeals many of the existing sections. This was done because the sections changed significantly and also for the purposes of facilitating the renumbering of the revisions.

In reviewing the draft, a member noted the local Bay Act programs must go before the Chesapeake Bay Local Assistance Board. He questioned if the provision for approval of a local program delegation by the Director would be without full Board approval.

Mr. Hill said the reasoning for that was the 90 day process. This is meant as an exception in those cases where the Board does not have a quorum in that 90 day time frame or the application is not received in time for full Board consideration. He noted this was the exception, rather than the rule and that in those cases where the Director did act the program would still be presented to the Board.

Mr. Hill clarified that the terms Stormwater Management Plan (SWMP) and Stormwater Pollution Prevention Plan (SWPPP) are not interchangeable. He noted that the SWMP may be a component of the SWPPP.

Ms. Burtner led members through a review of the draft document.

Members concurred with the repeal of the following sections:

**4VAC50-60-100. Applicability. Repeal**

**4VAC50-60-110. Technical criteria for local programs. Repeal**

**4VAC50-60-120. Requirements for local program and ordinance. Repeal**

**4VAC50-60-130. Administrative procedures: stormwater management plans. Repeal**

**4VAC50-60-140. Administrative procedures: exceptions.** Repeal

**4VAC50-60-150. Administrative procedures: maintenance and inspections.** Repeal

**4VAC50-60-102. Authority and Applicability.**

A member noted that the TAC has not reached a consensus concerning the education and outreach component or whether or not the component should be specified in the regulations.

**4VAC50-60-104. Technical criteria for local programs.**

Mr. Dowling noted that subsection "D" was not applicable to this section and will be stricken.

A member noted a concern about a locality trying to be more proactive and adopting more stringent requirements.

A member representing a locality said he would prefer to have the option for more stringent requirements.

Mr. Brown of the Attorney General's office said that he thought it would be possible for the state to adopt the more stringent requirements of the locality. He agreed to research this and provide additional guidance to the Department.

A member asked if the TAC needed to review Part IV of the regulations for compliance with the changes in Part III.

A member asked if state agencies would be required to know and comply with local code.

It was noted that the state cannot be compelled to comply with local rules that are different unless the Governor specifically directs them to do so.

Mr. Brown said that the regulation sets up state agency projects separate from what the localities will be reviewing.

A member noted that state agency projects are to be brought to a locality's attention and cited the following code reference.

§ 15.2-2202. Duties of state agencies.

*C. Every state agency responsible for the construction, operation or maintenance of public facilities within the Commonwealth shall notify the chief administrative officer of every locality in which the agency intends to undertake a capital project involving new construction costing at least \$100,000. The notice shall be given*

*during the planning phase of the project and prior to preparation of construction and site plans and shall inform localities that preliminary construction and site plans will be available for distribution, upon the request of the locality.*

Ms. Burtner clarified that the consensus of the committee was for the Attorney General's office to look at 4VAC 50-60-104 B and C taking into consideration the discussion to resolve the issue of stringency, the issue of notification, and the issue of approval.

Mr. Capps suggested adding to that consideration of what type of authority DCR has to enforce a local ordinance that is more stringent.

A member noted that the regulations only require localities in the Bay Act area to comply with the Bay Act regulations, however it was hoped that DCR would comply with these regulations outside of the Bay Act area.

#### **4VAC50-60-106. Local Program Administrative Requirements.**

Under Subsection A it was proposed that the components in item #8 did not have to be part of an ordinance and should be removed to a subsection C. It was also noted that "procedures for long-term BMP monitoring" should be added to Subsection A.

It was noted that the issue of the return of bonds should be clarified as outlined in the Code. There should be a mechanism to release the bonds.

#### **4VAC50-60-108. Local program stormwater management plan review.**

A member suggested eliminating subsection "A" and rewriting subsection "B" as "A" to say "may submit" a concept plan to determine what needs to be done.

A member said that her locality did not allow land disturbances until a complete set of plans is approved.

Another member noted that her locality allowed clearing and grading with certain conditions.

It was suggested that a conceptual plan be limited to the initial clearing and grading of a site.

A member asked if this wording would require localities to allow concept plans.

A member said subsection "B" should follow subsection "C." The completed stormwater plan section should come first followed by the section allowing the locality to accept a concept plan.

Mr. Dowling said the terminology of “conceptual plan” came from the existing voluntary ordinance previously developed. The terminology has been in use for several years. It was determined that the term “initial stormwater management plan” should be utilized.

Mr. Hill noted that as worded subsection “A” would mean that site development prior to approval of a complete plan is not permitted.

Ms. Burtner said that per the discussion subsection “C” would be moved up followed by subsection “B.”

Further the former subsection “B” (now “C”) is modified to say the concept plan may be allowed by the locality but there must be an approved erosion and sediment plan.

A member asked about incentives for developers.

It was suggested that be left to the discretion of the localities.

Mr. Dowling said that it may not be the work of the TAC, but that the model ordinance will be reworked.

It was noted under subsection C1 “g” the term “good engineering practices” was a P.E. (professional engineer) recognized term.

There was discussion of the 15-day review in subsection C2.

While there was consensus for the need for a deadline, there was no consensus on number of days. The issue will be brought to the full TAC for discussion.

**4VAC 50-60-112. Local program issuance of VSMP General Permit for Discharges of Stormwater from Construction Activities.**

A question was raised whether this or another section should address “individual permits.”

**4VAC50-60-115. Local program inspections.**

Initial discussions involved a deliberation of the requirement for local programs to inspect stormwater BMPs on an annual basis.

A member asked for an explanation with regard to the approval of an alternative inspection program in lieu of inspecting all BMPs annually.

Mr. Hill said that a locality could submit a request for an alternative inspection program to the Board.

**4VAC50-60-116. Local program enforcement.**

Much of this language is in the existing regulations.

A member asked about the stop work order.

Mr. Hill said that was only in the E&S control law.

**4VAC 50-60-118. Hearings**

A member suggested editing this section to one sentence.

It was noted that the procedure for hearings may differ between localities.

**4VAC 50-60-122. Local program: exceptions.**

Mr. Dowling noted that this section was based primarily on existing language.

It was acknowledged that there may be addition discussion of this item at the full TAC meeting.

**4VAC50-60-124. Local program; BMP maintenance.**

A member asked if DCR was considering a centralized database to track BMPs.

Mr. Hill said staff is working on developing that information.

**4VAC50-60-126. Local program: reporting and record keeping.**

A member asked if DCR really wanted the reports on a monthly basis.

It was noted that there should be a clear list of information wanted.

Ms. Burtner noted that much of this was based on how EPA has asked for reporting.

Following a break, the discussion moved to Part III C document regarding DCR local program review procedures beginning with:

**4VAC50-60-156. Authority and Applicability.**

A member asked if DCR would be looking at an alternative inspection program as part of this review.

Mr. Capps said the review would include that.

**4VAC 50-60-157. Stormwater Management Program Review.**

It was suggested that language regarding agreements should be added.

Discussion moved to Part IID regarding Virginia Soil and Water Conservation Board delegation procedures for local programs.

**4VAC50-60-158. Authority and Applicability.**

There were no comments regarding this section.

**4VAC50-60-159. Delegation Procedures for local stormwater management programs.**

The discussion returned to Part IIIB regarding DCR administration of local programs.

**4VAC50-60-128. Authority and Applicability.**

There were no comments regarding this section.

**4VAC50-60-132. Technical criteria for Department administered local programs.**

It was suggested that DCR take another look at subsection “B” with regard to stringency.

**4VAC50-60-134. Department administered Local Program Administrative Authorities.**

It was noted that this might be rewritten for clarity.

**4VAC50-60-136. Department administered Local Program stormwater management plan review.**

A member suggested including incentives for localities to administer their own program.

**4VAC50-60-138. Department administered local programs issuance of the VSMP General Permit for Discharges of Stormwater from Construction Activities.**

A question on the inclusion of “industrial permits” was raised again.

**4VAC50-60-142. Department administered Local program inspections.**

There were no comments with regard to this section.

**4VAC50-60-144. Department administered local program enforcement.**

It was suggested that the word “program” be removed from this section and the titles of the other sections in Part III B.

**4VAC50-60-146. Hearings.**

These sections should be merged to one sentence if possible.

**4VAC50-60-148. Department administered Local program; exceptions.**

There were no additional comments regarding this section.

**4VAC50-60-152. Department administered Local program: BMP maintenance.**

There were no additional comments regarding this section.

**4VAC50-60-154. Department administered Local program: reporting and record keeping.**

It was noted that monthly reporting allows the department to track projects statewide and to account for the revenues received.

Ms. Burtner directed attendees to the last page of the handout. This addressed the issue of public education.

Consensus was that public education does not need to be considered as part of the regulation.

Mr. Frye said there is not enough public awareness and environmental education at any level. He said this would need additional consideration.

A member said outreach works best on a case by case basis.

Ms. Burtner noted the following dates:

Part II Subcommittee, August 16  
Part XIII Subcommittee, August 29

The next full meeting of the TAC is Monday, August 21 at the Science Museum of Virginia. There may be a need to consider other dates in September.

The meeting adjourned at 3:30 p.m.



Attachment #1

## **Part IIIA Local Programs**

**4VAC50-60-100. Applicability.** Repeal

**4VAC50-60-110. Technical criteria for local programs.** Repeal

**4VAC50-60-120. Requirements for local program and ordinance.** Repeal

**4VAC50-60-130. Administrative procedures: stormwater management plans.** Repeal

**4VAC50-60-140. Administrative procedures: exceptions.** Repeal

**4VAC50-60-150. Administrative procedures: maintenance and inspections.** Repeal

### **4VAC50-60-102. Authority and Applicability.**

In accordance with the Virginia Stormwater Management Law, §10.1-603.2 et seq., the Board is authorized to delegate to an approved locality the administration of a local stormwater management program. Pursuant to §10.1-603.4, the Board is required to establish standards and procedures for such a delegation. Delegation shall follow the adoption of a local stormwater management program by a locality in accordance with §§10.1-603.3 A or B and the Board's deeming of such program as consistent with the Virginia Stormwater Management Law and these regulations in accordance with §10.1-603.3 F.

This part specifies the minimum technical criteria for a locality or a Department-administered stormwater management program and the requirements of a local government ordinance regarding a stormwater management program. Such criteria include but are not limited to administrative, plan review, permit issuance, inspection, enforcement, and education and outreach components.

### **4VAC50-60-104. Technical criteria for local programs.**

A. All local stormwater management programs shall comply with the provisions of Part II (4VAC50-60-40 et seq.).

B. A locality that has adopted more stringent requirements or implemented a regional (watershed-wide) stormwater management plan may request, in writing, that the department consider these requirements in its review of state projects within that locality.

C. Nothing in this part shall be construed as authorizing a locality to regulate, or to require prior approval by the locality for, a state project.

D. When reviewing a federal project, the Department shall apply the provisions of this chapter.

### **4VAC50-60-106. Local Program Administrative Requirements.**

A. A local stormwater management program shall provide for the following:

1. Identification of the permit issuing authority, the plan approving authority, the inspection authority, and the enforcement authority;

2. Regulations and technical criteria to be used in the stormwater management program;

3. Procedures for the submission and approval of plans;

4. Procedures for the issuance, denial, revocation, termination, reissuance, transfer, or modifications of stormwater permits;

5. Assessment and collection of fees;

6. Inspection and monitoring of land disturbing activities for compliance;

7. Enforcement, and;

8. Reporting to the Department information related to the administration and implementation of the local program, in a method and on a time schedule established by the Department.

B. A locality shall adopt an ordinance that incorporates the components setout in subsection A.

C. A local program may require the submission of a reasonable performance bond or such other financial surety in accordance with the criteria set forth in §10.1-603.8.

D. Nothing in this chapter shall be construed as limiting the rights of other federal and state agencies from imposing stricter technical criteria or other requirements as allowed by law.

#### **4VAC50-60-108. Local program stormwater management plan review.**

A. A locality shall require new or redevelopment projects to submit stormwater management plans for review and approval prior to commencement of the land disturbing activities.

B. A stormwater management concept plan may be submitted to a locality for review and approval when it is accompanied by an approved erosion and sediment control plan. Such conceptual plans shall be limited to the initial clearing and grading of the site. A concept plan does not supercede the need for the submittal and approval of a complete stormwater management plan. The following information shall be included in the concept plan:

1. A map(s) indicating the location of the natural resources and structures at the site and surrounding area as it exists prior to the commencement of the project. This map(s) shall also include an identification of the limits of clearing and grading, existing and proposed drainage patterns, perennial streams, soil types, forest cover, topography, wetlands, and other native vegetative areas on the site. Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for development.

The map(s) may also include proposed buildings, roads, parking areas, utilities, and stormwater management measures. The map(s) may also show proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to; planned locations of utilities, roads and easements.

2. A narrative shall accompany such map(s) describing the elements setout in subsection 1. Acreages shall be provided for the overall site, limits of clearing and

grading, wetlands, and riparian areas. Such narrative shall include a justification of proposed changes in the sites natural conditions.

C. Localities shall approve or disapprove a complete stormwater management plans according to the following:

1. Localities shall begin stormwater management plan review upon submission of a complete plan. A complete plan shall at a minimum include the following elements:

a. Contact Information including the name, address, and telephone number of all persons having a legal interest in the property and the tax reference number and parcel number of the property or properties affected;

b. A narrative description of the site and proposed stormwater management BMPs and how the BMPs will be maintained;

c. The location and the design of the proposed stormwater management BMPs;

d. A report identifying the geotechnical properties for the hydrologic and structural properties of soils utilized with the installation of stormwater management BMPs per the Virginia Stormwater Management Handbook;

e. Overall site plan that identifies the location of state waters and that includes pre-developed and post-developed conditions for drainage areas including final drainage patterns and changes to existing contours;

f. Comprehensive hydrologic and hydraulic computations of the pre-development and post-development runoff conditions for the required design storms;

g. Good engineering practices and calculations verifying compliance with the water quality and quantity requirements of this chapter;

h. Inspection schedules, maintenance agreements and sources for funding the maintenance of all stormwater management BMPs;

i. All stormwater management plans shall be appropriately sealed and signed by a professional in adherence to all minimum standards and requirements pertaining to the practice of that profession in accordance with Chapter 4 of Title 54.1 of the Code of Virginia and attendant regulations; and

j. The person responsible for the development project shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan.

2. Upon receipt of a plan, the locality shall have 15 days to determine the completeness of the plan. If a plan is deemed to be incomplete based on the criteria setout in subsection A1 of this section, the locality must identify in writing the reasons the plan is deemed deficient.

3. Upon receipt of a complete plan, a maximum of 60 calendar days will be allowed for the review of the plan. During the 60-day review period, the locality shall either approve or disapprove the plan and communicate its decision to the person responsible for the development project in writing. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the locality's stormwater management program.

4. A disapproval of a plan shall contain the reasons for disapproval.

D. Each plan approved by a locality may be changed in accordance with the following:

1. Changes to an approved plan shall be allowed only after the review and written approval of the plan approving authority.

2. If field inspection shows that a plan is not adequate, the person responsible for the development project may request modifications to the approved plan to address noted deficiencies. The plan approving authority shall respond in writing either approving or disapproving such request.

3. The plan approving authority based on an inspection may require amendments to the approved plan to address the noted deficiencies and notify the person responsible for the development project of the required modifications.

**4VAC50-60-112. Local program issuance of VSMP General Permit for Discharges of Stormwater from Construction Activities.**

A. A locality shall issue coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities in a format determined by the Department and in accordance with the following:

1. The applicant must have an approved conceptual stormwater management plan or an approved stormwater management plan for the land disturbing activity.

2. The applicant has submitted a complete registration statement for the VSMP General Permit for Discharges of Stormwater from Construction Activities and the registration statement has been reviewed and approved by the local program authority.

3. The applicant has submitted the required fee form and fee for the registration statement seeking coverage under the VSMP general permit.

4. Applicants submitting registration statements deemed to be incomplete must be notified that the registration statement is not complete, informed of what material needs to be submitted to complete the registration statement, and that the land disturbing activity does not have VSMP general permit coverage.

B. The locality shall report VSMP general permit information to the Department in accordance with 4VAC50-60-126.

**4VAC50-60-114. Local program inspections.**

A. A local program shall conduct inspections of stormwater management BMPs during construction to ensure that the location and design criteria of the BMPs are in accordance with the approved plan.

B. A local program shall require the person responsible for the development project to submit a final report containing an as-built survey certifying that the stormwater management BMPs requiring maintenance have been implemented in accordance with the approved plan. The local program shall inspect the BMPs for compliance with the final report.

C. A local program shall require the operator of stormwater management BMPs to conduct inspections in accordance with a recorded inspection schedule and maintenance agreement or on an annual basis for stormwater management BMPs without a recorded inspection schedule and maintenance agreement and provide a written report to the local program administrator.

D. A local program shall inspect stormwater management BMPs on an annual basis or may establish an alternative inspection program which ensures that stormwater

management BMPs are functioning as intended. Any alternative inspection program shall be:

1. Approved by the Board prior to implementation;
2. Established in writing;
3. Based on a system of priorities that, at a minimum, considers the purpose of the facility, the contributing drainage area, and downstream conditions; and
4. Documented by inspection records.
- E. Inspection reports shall be generated and kept on file for all stormwater management BMPs inspected by the local program.
- F. The local program shall be allowed by the operator to conduct periodic inspections of the project.

**4VAC50-60-116. Local program enforcement.**

- A. A local program shall incorporate the following components:
  1. Informal and formal administrative enforcement procedures including:
    - a. Verbal warning and inspection reports;
    - b. Notice of corrective action;
    - c. Consent special orders and civil charges in accordance with §§ 10.1-603.2:1 7 and 10.1-603.14 D 2;
    - d. Notice to comply in accordance with § 10.1-603.11;
    - e. Special orders in accordance with § 10.1-603.2:1 7;
    - f. Emergency special orders in accordance with § 10.1-603.2:1 7; and
    - g. Public notice and comment period pursuant to 4 VAC 50-60-660.
  2. Civil and criminal judicial enforcement procedures including:
    - a. Schedule of civil penalties setout in subsection D;
    - b. Criminal penalties in accordance with § 10.1-603.14 B and C; and
    - c. Injunctions in accordance with §§ 10.1-603.12:4 and 10.1-603.14 D1
- B. A local program shall develop a policy and procedures manual that outlines the steps to be taken regarding enforcement actions under the Stormwater Management Act and attendant regulations, and local ordinance.
- C. A local program may utilize the Department's Stormwater Management Enforcement Manual as guidance in establishing policy and procedure manuals.
- D. Schedule of Civil Penalties set by the Board in accordance with § 10.1-603.14
- A. The Board intends that these civil penalties generally be applied after other enforcement remedies have been unsuccessful, in egregious situations, or for repeat offenders.

<u>Violations and Frequency of Occurrence *</u>	<u>Maximum \$\$/occurrence (occur.)/day</u>	<u>Recommended Minimum \$\$/occurrence/day</u>
<u>No Permit Registration</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$10,000/ occur./ day(s)</u>

<u>No Stormwater Pollution Prevention Plan (SWPPP)</u> <u>[No SWPPP components including erosion and sediment (E&amp;S Control Plan)]</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$10,000/ occur./ day(s)</u>
<u>No approved E&amp;S Control Plan</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$10,000/ occur./ day(s)</u>
<u>Failure to install stormwater Best Management Practices (BMPs) or E&amp;S controls**</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$5,000/ occur./ day(s)</u>
<u>Failure to conduct required inspections</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$1,000/ occur./ day(s)</u>
<u>Operational deficiencies (e.g., failure to initiate stabilization measures as soon as practicable; failure to implement control measures for construction debris; incomplete SWPPP; SWPPP not onsite; Stormwater BMPs or erosion and sediment controls improperly installed or maintained; incomplete, improper or missed inspections.)</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$500/ occur./ day(s)</u>

\* The frequency of occurrence is a maximum of per day per violation.

\*\* Each BMP and E&S control not installed constitutes a separate violation

E. Pursuant to § 10.1-603.2:1 2, delegation shall not remove from the Board authority to enforce the provisions of the stormwater management law and attendant regulations.

#### **4VAC50-60-118. Hearings.**

A. A local program shall ensure that any permit applicant or permittee shall have a right to a hearing pursuant to § 10.1-603.12:6.

B. A local program shall ensure that all hearings held under this Chapter shall be conducted in accordance with § 10.1-603.12:7 or as otherwise provided by law.

#### **4VAC50-60-122. Local program: exceptions.**

A. A person may request an exception to the provisions of Part II (4VAC50-60-40 et seq.). A request for an exception shall be submitted, in writing, to the permit issuing authority. An exception may be granted, provided that: (i) the exceptions is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the intent of the Act and this chapter are preserved., (iii) granting the exception will not confer on the permittee any special privileges that are denied to other permittees who present similar circumstances, and (iv)

exception requests are not based upon conditions or circumstances that are self-imposed or self-created.

B. Economic hardship is not sufficient reason to grant an exception from the requirements of this chapter.

C. Under no circumstance shall the permit issuing authority grant an exception to the requirement that the land disturbing activity obtain a permit.

#### **4VAC50-60-124. Local program: BMP maintenance.**

A. Responsibility for the operation and maintenance of stormwater management BMPs in accordance with this chapter, unless assumed by a governmental agency, shall remain with the property owner and shall pass to any successor or owner. If portions of the land are to be transferred or conveyed, legally binding arrangements shall be made to pass the basic responsibility to successors in title. These arrangements shall designate for each project the property owner, governmental agency, or other legally established entity to be permanently responsible for maintenance.

B. In the case of developments where lots are to be transferred or conveyed, permanent arrangements satisfactory to the local program shall be made to ensure continued performance of this chapter.

C. Where maintenance or repair is neglected, or the stormwater management BMPs becomes a danger to public health or safety, the local program has the authority to perform the work and to recover the costs from the owner.

D. The local program shall require right-of-entry agreements or easements from the owner for purposes of inspection and maintenance.

E. The local program shall ensure that the flow and drainage patterns associated with a permanent BMP are maintained. Proposed changes to the flow and drainage patterns must be approved by the local program.

#### **4VAC50-60-126. Local program: reporting and record keeping.**

A. A local program shall report in a format provided by the Department on a monthly basis. The information to be provided shall include but not be limited to the following:

1. Permitted project information to include permit number, operator name, activity name, acres disturbed, date of permit coverage and date of permit termination;
2. Information on each permanent BMP installed to include location, acres treated, and the state waters the BMP will discharge into;
3. Number of inspections;
4. Number and type of enforcement actions; and
5. Number of exceptions applied for and whether granted or denied.

B. A local program shall keep records in accordance with the following:

1. Permit files shall be kept by the local program for 5 years after permit termination. After 5 years, the registration statements, notices of coverage and notices of termination shall be archived at the Library of Virginia in accordance with its regulations.

2. BMP maintenance agreements, design standards and specifications, post-construction surveys, inspection reports, and maintenance records shall be maintained by the local program in perpetuity.

3. Other records shall be maintained in accordance with the regulations of the Library of Virginia.

## **Part IIIB Department of Conservation and Recreation administration of local programs**

### **4VAC50-60-128. Authority and Applicability.**

In the absence of delegation to a locality, the Department shall administer the local stormwater management program in accordance with §10.1-603.3 C. This part specifies the minimum technical criteria for a Department-administered stormwater management program in accordance with the Virginia Stormwater Management Law, §10.1-603.2 et seq., and the standards and criteria established in these regulations by the Board pursuant to its authority under that article. Such criteria include but are not limited to administrative, plan review, inspection, enforcement, and education and outreach components.

### **4VAC50-60-132. Technical criteria for Department administered local programs.**

A. The Department administered local stormwater management programs shall comply with the provisions of Part II (4VAC50-60-40 et seq.).

B. When the Department administers a local program in a locality that has adopted more stringent requirements or implemented a regional (watershed-wide) stormwater management plan department may consider these requirements in its review of projects within the locality.

C. When reviewing a federal project, department shall apply the provisions of this chapter.

### **4VAC50-60-134. Department administered Local Program Administrative Authorities.**

A. The Department is the permit issuing authority, plan approving authority, and the enforcement authority.

B. The Department or its designee is the plan reviewing authority and the inspection authority.

C. The Department shall assess and collect fees.

D. The Department may require the submission of a reasonable performance bond or such other financial surety in accordance with the criteria set forth in §10.1-603.8 prior to the issuance of the general permit and in accordance with the following:

1. The amount of the installation performance security shall be the total estimated construction cost of the stormwater management BMPs approved under the stormwater management plan, plus 25%;

2. The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain appropriate actions which may be required of the applicant in accordance with the approved stormwater management plan;



3. If the Department takes such action upon such failure by the applicant, the Department may collect from the applicant for the difference should the amount of the reasonable cost of such action exceed the amount of the security held; and

4. Within sixty days of the completion of the requirements of the VSMP permit conditions and the Department's acceptance of the Notice of Termination, such bond, cash escrow, letter of credit or other legal arrangement shall be refunded to the applicant.

E. Nothing in this chapter shall be construed as limiting the rights of other federal and state agencies from imposing stricter technical criteria or other requirements as allowed by law.

**4VAC50-60-136. Department administered Local Program stormwater management plan review.**

A. The Department shall require new or redevelopment projects to submit stormwater management plans for review and approval prior to commencement of the land disturbing activities.

B. The Department or its designee shall approve or disapprove stormwater management plans according to the following:

1. Stormwater management plan review shall begin upon submission of a complete plan. A stormwater management concept plan or clearing and grading plan shall not be considered a complete plan. A complete plan shall at a minimum include the following elements:

a. Contact Information including the name, address, and telephone number of all persons having a legal interest in the property and the tax reference number and parcel number of the property or properties affected;

b. A narrative description of the site and proposed stormwater management BMPs and how the BMPs will be maintained;

c. The location and the design of the proposed stormwater management BMPs;

d. A report identifying the geotechnical properties for the hydrologic and structural properties of soils utilized with the installation of stormwater management BMPs per the Virginia Stormwater Management Handbook;

e. Overall site plan that identifies the location of state waters and that includes pre-developed and post-developed conditions for drainage areas including final drainage patterns and changes to existing contours. At a minimum, this will include a 1" = 200' topographic base map of the site which includes all contributing drainage areas and downstream receiving areas of the proposed development and indicates existing surface water drainage including streams, ponds, culverts, ditches, and wetlands; current land use including all existing structures; locations of utilities, roads, and easements; and significant natural and manmade features not otherwise shown necessary to meet the requirements of this chapter;

f. Comprehensive hydrologic and hydraulic computations of the pre-development and post-development runoff conditions for the required design storms;

g. Good engineering practices and calculations verifying compliance with the water quality and quantity requirements of this chapter;

h. Inspection schedules, maintenance agreements and sources for funding the maintenance of all stormwater management BMPs;

i. All stormwater management plans shall be appropriately sealed and signed by a professional in adherence to all minimum standards and requirements pertaining to the practice of that profession in accordance with Chapter 4 of Title 54.1 of the Code of Virginia and attendant regulations;

j. The person responsible for the development project shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan; and

k. The person responsible for the development project shall provide proposed right-of-entry agreements or easements, acceptable to the Department, from the owner for purposes of inspection and maintenance.

2. Upon receipt of a plan, the Department or its designee shall have 15 days to determine the completeness of the plan. If a plan is deemed to be incomplete based on the criteria setout in subsection A1 of this section, the Department must identify in writing the reasons the plan is deemed deficient.

3. Upon receipt of a complete plan, a maximum of 60 calendar days will be allowed for the review of the plan. During the 60-day review period, the Department shall either approve or disapprove the plan and communicate its decision to the person responsible for the development project in writing. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the Department's administered stormwater management program.

4. A disapproval of a plan shall contain the reasons for disapproval.

C. Each plan approved by the Department may be changed in accordance with the following:

1. Changes to an approved plan shall be allowed only after the review and written approval of the Department.

2. If field inspection shows that a plan is not adequate, the person responsible for the development project may request modifications to the approved plan to address noted deficiencies. The Department shall respond in writing either approving or disapproving such request.

3. The Department based on an inspection may require amendments to the approved plan to address the noted deficiencies and notify the person responsible for the development project of the required modifications.

**4VAC50-60-138. Department administered local program issuance of the VSMP General Permit for Discharges of Stormwater from Construction Activities.**

The Department shall issue coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities in accordance with the following:

1. The applicant must have a Department approved stormwater management plan for the land disturbing activity.

2. The applicant has submitted a complete registration statement for the VSMP General Permit for Discharges of Stormwater from Construction Activities and the registration statement has been reviewed and approved by the Department.

3. The applicant has submitted the required fee form and fee for the registration statement seeking coverage under the VSMP general permit.

4. Applicants submitting registration statements deemed to be incomplete must be notified that the registration statement is not complete, informed of what material needs to be submitted to complete the registration statement, and that the land disturbing activity does not have VSMP general permit coverage.

**4VAC50-60-142. Department administered Local program inspections.**

A. The Department or its designee shall conduct inspections of stormwater management BMPs during construction to ensure that the location and design criteria of the BMPs are in accordance with the approved plan.

B. The Department shall require the person responsible for the development project to submit a final report containing an as-built survey certifying that the stormwater management BMPs requiring maintenance have been implemented in accordance with the approved plan. The Department or its designee shall inspect the BMPs for compliance with the final report.

C. The Department shall require the operator of stormwater management BMPs to conduct inspections in accordance with a recorded inspection schedule and maintenance agreement or on an annual basis for stormwater management BMPs without a recorded inspection schedule and maintenance agreement and provide a written report to the Department.

D. The Department or its designee shall inspect stormwater management BMPs on an annual basis or may establish an alternative inspection program which ensures that stormwater management BMPs are functioning as intended. Any alternative inspection program shall be:

1. Approved by the Board prior to implementation;
2. Established in writing;
3. Based on a system of priorities that, at a minimum, considers the purpose of the facility, the contributing drainage area, and downstream conditions; and
4. Documented by inspection records.

E. Inspection reports shall be generated and kept on file for all stormwater management BMPs inspected by the Department or its designee.

F. The Department or its designee shall be allowed by the operator to conduct periodic inspections of the project.

**4VAC50-60-144. Department administered local program enforcement.**

A. A Department administered local program shall contain the following components:

1. Informal and formal administrative enforcement procedures including:
  - a. Verbal warning and inspection reports;
  - b. Notice of corrective action;
  - c. Consent special orders and civil charges in accordance with §§ 10.1-603.2:1 7 and 10.1-603.14 D 2;
  - d. Special orders in accordance with § 10.1-603.2:1 7;
  - e. Emergency special orders in accordance with § 10.1-603.2:1 7; and

f. Public notice and comment period pursuant to 4 VAC 50-60-660.

2. Civil and criminal judicial enforcement procedures including:

a. Schedule of civil penalties setout in subsection C;

b. Criminal penalties in accordance with § 10.1-603.14 B and C; and

c. Injunctions in accordance with §§ 10.1-603.12:4 and 10.1-603.14 D1.

B. The Department's Stormwater Management Enforcement Manual shall serve as guidance to be utilized in enforcement actions under the Stormwater Management Act and attendant regulations.

C. Schedule of Civil Penalties set by the Board in accordance with § 10.1-603.14

A. The Board intends that these civil penalties generally be applied after other enforcement remedies have been unsuccessful, in egregious situations, or for repeat offenders.

<u>Violations and Frequency of Occurrence *</u>	<u>Maximum \$\$/occurrence (occur.)/day</u>	<u>Recommended Minimum \$\$/occurrence/day</u>
<u>No Permit Registration</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$10,000/ occur./ day(s)</u>
<u>No Stormwater Pollution Prevention Plan (SWPPP) [No SWPPP components including erosion and sediment (E&amp;S Control Plan)]</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$10,000/ occur./ day(s)</u>
<u>No approved E&amp;S Control Plan</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$10,000/ occur./ day(s)</u>
<u>Failure to install stormwater Best Management Practices (BMPs) or E&amp;S controls**</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$5,000/ occur./ day(s)</u>
<u>Failure to conduct required inspections</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$1,000/ occur./ day(s)</u>
<u>Operational deficiencies (e.g., failure to initiate stabilization measures as soon as practicable; failure to implement control measures for construction debris; incomplete SWPPP; SWPPP not onsite; Stormwater BMPs or erosion and sediment controls improperly installed or maintained; incomplete, improper or missed inspections.)</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$500/ occur./ day(s)</u>

\* The frequency of occurrence is a maximum of per day per violation.

\*\* Each BMP and E&S control not installed constitutes a separate violation

#### **4VAC50-60-146. Hearings.**

A. Any permit applicant or permittee shall have a right to a hearing pursuant to § 10.1-603.12:6.

B. All hearings held under this chapter shall be conducted in accordance with § 10.1-603.12:7 or as otherwise provided by law.

**4VAC50-60-148. Department administered Local program: exceptions.**

A. A person may request an exception to the provisions of Part II (4VAC50-60-40 et seq.). A request for an exception shall be submitted, in writing, to the Department. An exception may be granted, provided that: (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the intent of the Act and this chapter are preserved, (iii) granting the exception will not confer on the permittee any special privileges that are denied to other permittees who present similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created.

B. Economic hardship is not sufficient reason to grant an exception from the requirements of this Chapter.

C. Under no circumstance shall the Department grant an exception to the requirement that the land disturbing activity obtain a permit.

**4VAC50-60-152. Department administered Local program: BMP maintenance.**

A. Responsibility for the operation and maintenance of stormwater management BMPs in accordance with this chapter, unless assumed by a governmental agency, shall remain with the property owner and shall pass to any successor or owner. If portions of the land are to be sold, legally binding arrangements shall be made to pass the basic responsibility to successors in title. These arrangements shall designate for each project the property owner, governmental agency, or other legally established entity to be permanently responsible for maintenance.

B. In the case of developments where lots are to be sold, permanent arrangements satisfactory to the Department shall be made to ensure continued performance of this chapter.

C. Where maintenance or repair is neglected, or the stormwater management BMPs becomes a danger to public health or safety, the Department has the authority to perform the work and to recover the costs from the owner.

D. The Department shall require right-of-entry agreements or easements, acceptable to the Department, from the owner for purposes of inspection and maintenance.

E. The Department shall ensure that the flow and drainage patterns associated with a permanent BMP is maintained and proposed changes to the flow and drainage patterns must be approved by the Department.

**4VAC50-60-154. Department administered Local program: reporting and record keeping.**

A. The Department, on a monthly basis, will compile the following information:

1. Permitted project information to include permit number, operator name, activity name, acres disturbed, date of permit coverage and date of permit termination;

2. Information on each permanent BMP installed to include location, acres treated, and the state waters the BMP will discharge into;

3. Number of inspections;

4. Number and type of enforcement actions; and

5. Number of exceptions applied for and whether granted or denied.

B. The Department shall keep records in accordance with the following:

1. Permit files shall be kept by the Department for 5 years after permit termination. After 5 years, the registration statements, notices of coverage and notices of termination shall be archived at the Library of Virginia in accordance with its regulations.

2. BMP maintenance agreements, design standards and specifications, post-construction surveys, inspection reports, and maintenance records shall be maintained by the Department in perpetuity or until the program is delegated.

3. Other records shall be maintained in accordance with the regulations of the Library of Virginia.

## **Part IIIC Department of Conservation and Recreation local program review procedures**

### **4VAC50-60-156. Authority and Applicability.**

This part specifies the criteria that the Department will utilize in reviewing a locality's administration of a stormwater management program pursuant to §10.1-603.12 following the delegation of a local stormwater management program to that locality by the Board in accordance with the Virginia Stormwater Management Law and these regulations.

### **4VAC50-60-157. Stormwater Management Program Review.**

A. The Department shall periodically review each Board approved program on a review schedule approved by the Board.

B. The Board approved review of a local program shall consist of the following:

1. A personal interview between Department staff and the local program administrator or his designee;

2. A review of the local ordinance(s) and other applicable documents;

3. A review of plans approved by the locality and consistency of application;

4. An inspection of regulated activities; and

5. A review of enforcement actions.

C. To the maximum extent practicable the Department will coordinate the reviews with other local government program reviews to avoid redundancy.

D. The Department shall determine if the program and ordinance are consistent with the state stormwater management regulations and notify the local program of its findings.

## **Part IIID Virginia Soil and Water Conservation Board delegation procedures for local programs**

**4VAC50-60-158. Authority and Applicability.**

Section 10.1-603.4 (1) requires that the Board establish standards and procedures for delegating the authority for administering a stormwater management program to localities. In accordance with that requirement, and with the further authority conferred upon the Board by the Virginia Stormwater Management Law, §10.1-603.2 et seq., this part specifies the procedures the Board will utilize in delegating a stormwater management program to a locality.

**4VAC50-60-159. Delegation Procedures for local stormwater management programs.**

A. A locality seeking delegation must submit to the Board an application package which, at a minimum, contains the following:

1. The local program ordinance(s) and other applicable documents;
2. A funding and staffing plan;
3. The policies and procedures for the administration, plan review, permit issuance, inspection and enforcement components of the program; and
4. The process by which the locality will collect permit fees and submit for deposit on a monthly basis to the Virginia Stormwater Management Fund.

B. Upon receipt of an application package, the Board or its designee shall have 15 days to determine the completeness of the application package. If an application package is deemed to be incomplete based on the criteria setout in subsection A of this section, the Board or its designee must identify in writing the reasons the application package is deemed deficient.

C. Upon receipt of a complete application package, the Board or its designee shall have a maximum of 90 calendar days for the review of the application package. During the 90-day review period, the Board or its designee shall either approve or disapprove the application and communicate its decision to the locality in writing. If the application is not approved, the reasons for not approving the application shall be provided to the locality in writing. Approval or denial shall be based on the application's compliance with the Virginia Stormwater Management Law and these regulations.

Does this concept become included?

Public Outreach & Education. What might this component include?